

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1307

Introduced by Assembly Member Berg-Dymally
(Principal coauthor: Senator Ashburn)

February 22, 2005

~~An act to amend Section 9250 of the Welfare and Institutions Code, relating to long-term care. An act to amend Sections 3011, 3020, 3027.1, 3040, and 3118 of, and to repeal Sections 3080 and 3082 of, the Family Code, relating to child custody.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1307, as amended, ~~Berg Dymally. Long-term care~~ **Child custody.**

(1) Existing law requires the court to consider specified factors, including, but not limited to, any history of abuse, in making a determination of the best interest of a child for purposes of determining child custody.

This bill would additionally require the court to order that parental responsibility for a minor child be shared equally by both parents, and to award equal joint custody to both parents, except under specified conditions.

(2) Existing law finds and declares that it is the policy of this state to assure that the health, safety, and welfare of children are the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children.

This bill would state the further findings of the Legislature that in the absence of evidence to the contrary, the best interest of the child

means equal contact with both parents as provided in an order for joint custody, unless a party or both parties request otherwise.

(3) Existing law authorizes the court to impose reasonable money sanctions, including reasonable attorney's fees incurred in recovering the sanctions, against a person who knowingly makes a false accusation of child abuse or neglect during a child custody proceeding, under certain conditions.

This bill would require the court to impose these money sanctions, and to consider a finding of an intentional false accusation made by a party to be a change of circumstances of an existing custody order.

(4) Existing law requires the court to consider specified custody arrangements, in order of preference, according to the best interest of the child.

This bill would revise and recast this provision to specify that custody should be granted first to both parents jointly and equally and, second, to either parent.

(5) Existing law establishes a presumption that joint custody is in the best interest of a minor child where the parents have agreed to joint custody or so agree in open court at a custody hearing, as specified. The court is required, when a request for joint custody is granted or denied, upon the request of any party, to state in its decision the reasons for granting or denying the request.

This bill would delete these provisions.

(6) This bill would make related, other conforming changes.

~~Existing law, the Mello-Granlund Older Californians Act, prescribes programs and services for the benefit of the state's older population and other populations served by the programs administered by the California Department of Aging. The act includes provisions calling for improved coordination and delivery of long-term care services.~~

~~This bill would make technical, nonsubstantive changes to the provisions of the act relating to the coordination and delivery of long-term care services.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 9250 of the Welfare and Institutions~~
- 2 ~~Code is amended to read:~~

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) The United States Supreme Court has continually*
4 *recognized that natural parents have a fundamental liberty*
5 *interest in the care, custody, and management of their children.*

6 *(b) Numerous public and private studies show that children*
7 *experience less social, educational, psychological, and legal*
8 *problems when they are raised with the equal involvement of*
9 *both parents despite separation or divorce.*

10 *(c) The current law causes unnecessary litigation, conflict*
11 *among parents, and the excessive use of limited court resources*
12 *by requiring courts to make a finding of the best interest of the*
13 *child in every case where there are two loving, concerned*
14 *parents interested in having an equal say in the raising of their*
15 *child.*

16 *(d) Trial courts can best protect the fundamental liberty*
17 *interest of parents in raising their children by awarding joint*
18 *custody to both interested parents in the absence of clear and*
19 *convincing evidence that such an award would not be in the best*
20 *interest of the child.*

21 *SEC. 2. Section 3011 of the Family Code is amended to read:*
22 *3011. (a) In any proceeding described in Section 3021, the*
23 *court shall do both of the following:*

24 *(1) Order that parental responsibility for a minor child be*
25 *shared equally by both parents.*

26 *(2) Award equal joint custody to both parents unless both*
27 *parties jointly request otherwise or a party alleges and proves by*
28 *clear and convincing evidence that joint custody would not be in*
29 *the best interest of the child. A statement that joint physical*
30 *custody is not in the best interest of the child is not sufficient to*
31 *satisfy the requirements of this section. If the court does not*
32 *order an equal joint custody award consistent with both parties'*
33 *fundamental liberty interest in raising their children, it shall*
34 *make a finding that specifically identifies those facts it relied*
35 *upon to determine that an equal joint custody award would not*
36 *be in the best interest of the child.*

37 *(b) In making a determination of the best interest of the child*
38 *in a proceeding described in Section 3021, the court shall, among*
39 *any other factors it finds relevant, consider all of the following:*

40 ~~*(a)*~~

1 (1) The health, safety, and welfare of the child.

2 ~~(b)~~

3 (2) (A) Any history of abuse by one parent or any other
4 person seeking custody against any of the following:

5 ~~(1)~~

6 (i) Any child to whom he or she is related by blood or affinity
7 or with whom he or she has had a caretaking relationship, no
8 matter how temporary.

9 ~~(2)~~

10 (ii) The other parent.

11 ~~(3)~~

12 (iii) A parent, current spouse, or cohabitant, of the parent or
13 person seeking custody, or a person with whom the parent or
14 person seeking custody has a dating or engagement relationship.

15 (B) As a prerequisite to the consideration of allegations of
16 abuse, the court may require substantial independent
17 corroboration, including, but not limited to, written reports by
18 law enforcement agencies, child protective services or other
19 social welfare agencies, courts, medical facilities, or other public
20 agencies or private nonprofit organizations providing services to
21 victims of sexual assault or domestic violence. As used in this
22 subdivision, “abuse against a child” means “child abuse” as
23 defined in Section 11165.6 of the Penal Code, and abuse against
24 any of the other persons described in ~~paragraph (2) or (3) clause~~
25 ~~(ii) or (iii) of subparagraph (A)~~ means “abuse” as defined in
26 Section 6203 ~~of this code~~.

27 ~~(e)~~

28 (3) The nature and amount of contact with both parents, except
29 as provided in Section 3046.

30 ~~(d)~~

31 (4) The habitual or continual illegal use of controlled
32 substances or habitual or continual abuse of alcohol by either
33 parent. Before considering these allegations, the court may first
34 require independent corroboration, including, but not limited to,
35 written reports from law enforcement agencies, courts, probation
36 departments, social welfare agencies, medical facilities,
37 rehabilitation facilities, or other public agencies or nonprofit
38 organizations providing drug and alcohol abuse services. As used
39 in this ~~subdivision~~ *paragraph*, “controlled substances” has the
40 same meaning as defined in the California Uniform Controlled

1 Substances Act, Division 10 (commencing with Section 11000)
2 of the Health and Safety Code.

3 ~~(e)–~~

4 *(5) Any additional information or evidence the court finds*
5 *relevant.*

6 *(c) (1) Where allegations about a parent pursuant to*
7 *paragraph (2) or (4) of subdivision (b)–~~or (d)~~ have been brought*
8 *to the attention of the court in the current proceeding, and the*
9 *court makes an order for sole or joint custody to that parent, the*
10 *court shall state its reasons in writing or on the record. In these*
11 *circumstances, the court shall ensure that any order regarding*
12 *custody or visitation is specific as to time, day, place, and*
13 *manner of transfer of the child as set forth in subdivision (b) of*
14 *Section 6323.*

15 *(2) The provisions of this subdivision shall not apply if the*
16 *parties stipulate in writing or on the record regarding custody or*
17 *visitation.*

18 *SEC. 3. Section 3020 of the Family Code is amended to read:*

19 *3020. (a) The Legislature finds and declares that it is the*
20 *public policy of this state to assure that the health, safety, and*
21 *welfare of children shall be the court's primary concern in*
22 *determining the best interest of children when making any orders*
23 *regarding the physical or legal custody or visitation of children.*
24 *The Legislature further finds that in the absence of evidence to*
25 *the contrary, the best interest of the child means equal contact*
26 *with both parents as provided in an order for joint custody unless*
27 *a party or both parties request otherwise. The Legislature further*
28 *finds and declares that the perpetration of child abuse or*
29 *domestic violence in a household where a child resides is*
30 *detrimental to the child.*

31 *(b) The Legislature finds and declares that it is the public*
32 *policy of this state to assure that children have frequent and*
33 *continuing contact with both parents after the parents have*
34 *separated or dissolved their marriage, or ended their relationship,*
35 *and to encourage parents to share *equally* the rights and*
36 *responsibilities of child rearing–~~in order to effect this policy,~~*
37 *except where the contact would not be in the best interest of the*
38 *child, as provided in Section 3011.*

39 ~~*(c) Where the policies set forth in subdivisions (a) and (b) of*~~
40 ~~*this section are in conflict, any court's order regarding physical*~~

1 ~~or legal custody or visitation shall be made in a manner that~~
2 ~~ensures the health, safety, and welfare of the child and the safety~~
3 ~~of all family members.~~

4 *(c) The Legislature finds and declares that in order to effect*
5 *the policies set forth in subdivisions (a) and (b) efficiently,*
6 *minimize unnecessary conflict between the parties, and reduce*
7 *any undue interference by government in the fundamental right*
8 *of parents to raise their children, courts shall order joint custody*
9 *equally to both parents as provided in Section 3011, unless the*
10 *court finds it would not be in the best interest of the child.*
11 *Consistent with this policy, any court order regarding visitation*
12 *shall be made in a manner that ensures the health, safety, and*
13 *welfare of all family members.*

14 *SEC. 4. Section 3027.1 of the Family Code is amended to*
15 *read:*

16 3027.1. (a) If a court determines, based on the investigation
17 described in Section 3027 or other evidence presented to it, that
18 an accusation of child abuse or neglect made during a child
19 custody proceeding is false and the person making the accusation
20 knew it to be false at the time the accusation was made, the court
21 ~~may~~ *shall* impose reasonable money sanctions, not to exceed all
22 costs incurred by the party accused as a direct result of defending
23 the accusation, and reasonable attorney's fees incurred in
24 recovering the sanctions, against the person making the
25 accusation. *The court also shall consider a finding of an*
26 *intentional false accusation made by a party to be a change of*
27 *circumstances of an existing custody order.* For the purposes of
28 this section, "person" includes a witness, a party, or a party's
29 attorney.

30 (b) On motion by any person requesting sanctions under this
31 section, the court shall issue its order to show cause why the
32 requested sanctions should not be imposed. The order to show
33 cause shall be served on the person against whom the sanctions
34 are sought and a hearing thereon shall be scheduled by the court
35 to be conducted at least 15 days after the order is served.

36 (c) The remedy provided by this section is in addition to any
37 other remedy provided by law.

38 *SEC. 5. Section 3040 of the Family Code is amended to read:*

1 3040. (a) Custody should be granted in the following order
2 of preference ~~according to the best interest of the child~~ as
3 provided in Sections 3011 and 3020:

4 (1) To both parents jointly ~~pursuant to Chapter 4 (commencing~~
5 ~~with Section 3080) or to either parent and equally.~~

6 (2) *To either parent.* In making an order granting custody to
7 either parent, the court shall consider, among other factors, which
8 parent is more likely to allow the child frequent and continuing
9 contact with the noncustodial parent, consistent with Section
10 3011 and 3020, and shall not prefer a parent as custodian because
11 of that parent's sex. The court, in its discretion, may require the
12 parents to submit to the court a plan for the implementation of
13 the custody order.

14 ~~(2)~~

15 (3) If to neither parent, to the person or persons in whose
16 home the child has been living in a wholesome and stable
17 environment.

18 ~~(3)~~

19 (4) To any other person or persons deemed by the court to be
20 suitable and able to provide adequate and proper care and
21 guidance for the child.

22 ~~(b) This section establishes neither a preference nor a~~
23 ~~presumption for or against joint legal custody, joint physical~~
24 ~~custody, or sole custody, but Subject to the provisions for equal~~
25 ~~joint custody provided in Section 3011, this section allows the~~
26 ~~court and the family the widest discretion to choose a parenting~~
27 ~~plan that is in the best interest of the child.~~

28 *SEC. 6. Section 3080 of the Family Code is repealed.*

29 ~~3080. There is a presumption, affecting the burden of proof,~~
30 ~~that joint custody is in the best interest of a minor child, subject~~
31 ~~to Section 3011, where the parents have agreed to joint custody~~
32 ~~or so agree in open court at a hearing for the purpose of~~
33 ~~determining the custody of the minor child.~~

34 *SEC. 7. Section 3082 of the Family Code is repealed.*

35 ~~3082. When a request for joint custody is granted or denied,~~
36 ~~the court, upon the request of any party, shall state in its decision~~
37 ~~the reasons for granting or denying the request. A statement that~~
38 ~~joint physical custody is, or is not, in the best interest of the child~~
39 ~~is not sufficient to satisfy the requirements of this section.~~

40 *SEC. 8. Section 3118 of the Family Code is amended to read:*

3118. (a) In any contested proceeding involving child custody or visitation rights, where the court has appointed a child custody evaluator or has referred a case for a full or partial court-connected evaluation, investigation, or assessment, and the court determines that there is a serious allegation of child sexual abuse, the court shall require an evaluation, investigation, or assessment pursuant to this section. When the court has determined that there is a serious allegation of child sexual abuse, any child custody evaluation, investigation, or assessment conducted subsequent to that determination shall be considered by the court only if the evaluation, investigation, or assessment is conducted in accordance with the minimum requirements set forth in this section in determining custody or visitation rights, except as specified in paragraph (1). For purposes of this section, a serious allegation of child sexual abuse means an allegation of child sexual abuse, as defined in Section 11165.1 of the Penal Code, that is based in whole or in part on statements made by the child to law enforcement, a child welfare services agency investigator, any person required by statute to report suspected child abuse, or any other court-appointed personnel, or that is supported by substantial independent corroboration as provided for in *subparagraph (B) of paragraph (2) of subdivision (b) of Section 3011*. When an allegation of child abuse arises in any other circumstances in any proceeding involving child custody or visitation rights, the court may require an evaluator or investigator to conduct an evaluation, investigation, or assessment pursuant to this section. The order appointing a child custody evaluator or investigator pursuant to this section shall provide that the evaluator or investigator have access to all juvenile court records pertaining to the child who is the subject of the evaluation, investigation, or assessment. The order shall also provide that any juvenile court records or information gained from those records remain confidential and shall only be released as specified in Section 3111.

(1) This section does not apply to any emergency court-ordered partial investigation that is conducted for the purpose of assisting the court in determining what immediate temporary orders may be necessary to protect and meet the immediate needs of a child. This section does apply when the

1 emergency is resolved and the court is considering permanent
2 child custody or visitation orders.

3 (2) This section does not prohibit a court from considering
4 evidence relevant to determining the safety and protection needs
5 of the child.

6 (3) Any evaluation, investigation, or assessment conducted
7 pursuant to this section shall be conducted by an evaluator or
8 investigator who meets the qualifications set forth in Section
9 3110.5.

10 (b) The evaluator or investigator shall, at a minimum, do all of
11 the following:

12 (1) Consult with the agency providing child welfare services
13 and law enforcement regarding the allegations of child sexual
14 abuse, and obtain recommendations from these professionals
15 regarding the child's safety and the child's need for protection.

16 (2) Review and summarize the child welfare services agency
17 file. No document contained in the child welfare services agency
18 file may be photocopied, but a summary of the information in the
19 file, including statements made by the children and the parents,
20 and the recommendations made or anticipated to be made by the
21 child welfare services agency to the juvenile court, may be
22 recorded by the evaluator or investigator, except for the identity
23 of the reporting party. The evaluator's or investigator's notes
24 summarizing the child welfare services agency information shall
25 be stored in a file separate from the evaluator's or investigator's
26 file and may only be released to either party under order of the
27 court.

28 (3) Obtain from a law enforcement investigator all available
29 information obtained from criminal background checks of the
30 parents and any suspected perpetrator that is not a parent,
31 including information regarding child abuse, domestic violence,
32 or substance abuse.

33 (4) Review the results of a multidisciplinary child interview
34 team (hereafter MDIT) interview if available, or if not, or if the
35 evaluator or investigator believes the MDIT interview is
36 inadequate for purposes of the evaluation, investigation, or
37 assessment, interview the child or request an MDIT interview,
38 and shall wherever possible avoid repeated interviews of the
39 child.

1 (5) Request a forensic medical examination of the child from
2 the appropriate agency, or include in the report required by
3 paragraph (6) a written statement explaining why the
4 examination is not needed.

5 (6) File a confidential written report with the clerk of the court
6 in which the custody hearing will be conducted and which shall
7 be served on the parties or their attorneys at least 10 days prior to
8 the hearing. This report may not be made available other than as
9 provided in this subdivision. This report shall include, but is not
10 limited to, the following:

11 (A) Documentation of material interviews, including any
12 MDIT interview of the child or the evaluator or investigator,
13 written documentation of interviews with both parents by the
14 evaluator or investigator, and interviews with other witnesses
15 who provided relevant information.

16 (B) A summary of any law enforcement investigator's
17 investigation, including information obtained from the criminal
18 background check of the parents and any suspected perpetrator
19 that is not a parent, including information regarding child abuse,
20 domestic violence, or substance abuse.

21 (C) Relevant background material, including, but not limited
22 to, a summary of a written report from any therapist treating the
23 child for suspected child sexual abuse, excluding any
24 communication subject to Section 1014 of the Evidence Code,
25 reports from other professionals, and the results of any forensic
26 medical examination and any other medical examination or
27 treatment that could help establish or disprove whether the child
28 has been the victim of sexual abuse.

29 (D) The written recommendations of the evaluator or
30 investigator regarding the therapeutic needs of the child and how
31 to ensure the safety of the child.

32 (E) A summary of the following information: whether the
33 child and his or her parents are or have been the subject of a child
34 abuse investigation and the disposition of that investigation; the
35 name, location, and telephone number of the children's services
36 worker; the status of the investigation and the recommendations
37 made or anticipated to be made regarding the child's safety; and
38 any dependency court orders or findings that might have a
39 bearing on the custody dispute.

1 (F) Any information regarding the presence of domestic
2 violence or substance abuse in the family that has been obtained
3 from a child protective agency in accordance with paragraphs (1)
4 and (2), a law enforcement agency, medical personnel or records,
5 prior or currently treating therapists, excluding any
6 communication subject to Section 1014 of the Evidence Code, or
7 from interviews conducted or reviewed for this evaluation,
8 investigation, or assessment.

9 (G) Which, if any, family members are known to have been
10 deemed eligible for assistance from the Victims of Crime
11 Program due to child abuse or domestic violence.

12 (H) Any other information the evaluator or investigator
13 believes would be helpful to the court in determining what is in
14 the best interests of the child.

15 (c) If the evaluator or investigator obtains information as part
16 of a family court mediation, that information shall be maintained
17 in the family court file, which is not subject to subpoena by either
18 party. If, however, the members of the family are the subject of
19 an ongoing child welfare services investigation, or the evaluator
20 or investigator has made a child welfare services referral, the
21 evaluator or investigator shall so inform the family law judicial
22 officer in writing and this information shall become part of the
23 family law file. This subdivision may not be construed to
24 authorize or require a mediator to disclose any information not
25 otherwise authorized or required by law to be disclosed.

26 (d) In accordance with subdivision (d) of Section 11167 of the
27 Penal Code, the evaluator or investigator may not disclose any
28 information regarding the identity of any person making a report
29 of suspected child abuse. Nothing in this section is intended to
30 limit any disclosure of information by any agency that is
31 otherwise required by law or court order.

32 (e) The evaluation, investigation, or assessment standards set
33 forth in this section represent minimum requirements of
34 evaluation and the court shall order further evaluation beyond
35 these minimum requirements when necessary to determine the
36 safety needs of the child.

37 (f) If the court orders an evaluation, investigation, or
38 assessment pursuant to this section, the court shall consider
39 whether the best interests of the child require that a temporary
40 order be issued that limits visitation with the parent against

1 whom the allegations have been made to situations in which a
2 third person specified by the court is present or whether visitation
3 will be suspended or denied in accordance with Section 3011.

4 (g) An evaluation, investigation, or assessment pursuant to this
5 section shall be suspended if a petition is filed to declare the
6 child a dependent child of the juvenile court pursuant to Section
7 300 of the Welfare and Institutions Code, and all information
8 gathered by the evaluator or investigator shall be made available
9 to the juvenile court.

10 (h) This section may not be construed to authorize a court to
11 issue any orders in a proceeding pursuant to this division
12 regarding custody or visitation with respect to a minor child who
13 is the subject of a dependency hearing in juvenile court or to
14 otherwise supersede Section 302 of the Welfare and Institutions
15 Code.

16 ~~9250. (a) The Legislature finds and declares all of the~~
17 ~~following:~~

18 ~~(1) Our delivery of long-term care needs to be vastly improved~~
19 ~~in order to coordinate services that are appropriate to each~~
20 ~~individual's functional needs and financial situation. Care~~
21 ~~services should be holistic and address the needs of the entire~~
22 ~~person, including the person's mental, physical, social, and~~
23 ~~emotional needs.~~

24 ~~(2) The coming age wave will bankrupt California if we~~
25 ~~maintain the current uncoordinated system of long-term care.~~

26 ~~(3) The new generation of aging Californians will desire,~~
27 ~~expect, and demand a much more responsive, coherent, and~~
28 ~~human-dignified system of care services.~~

29 ~~(4) Multiple funding streams and varied eligibility criteria~~
30 ~~have created "silos" of services, making it difficult for consumers~~
31 ~~to move with ease from one service or program to another.~~

32 ~~(5) Separate funding streams and uncoordinated services for~~
33 ~~older adults and adults with disabilities have created barriers in~~
34 ~~services for these populations. Adults with disabilities often~~
35 ~~receive long-term care services designed to support and protect~~
36 ~~the institutionalized older population. Instead, services need to be~~
37 ~~individualized to empower older adults and persons with~~
38 ~~disabilities to live in the community.~~

1 ~~(6) Historically, two delivery systems, referred to as the~~
2 ~~medical model and the social model of care, have evolved with~~
3 ~~little or no coordination between the two.~~

4 ~~(7) A high percentage of consumers enter the long-term care~~
5 ~~system after a hospitalization. Assistance and support following~~
6 ~~hospitalization would reduce the number of nursing home~~
7 ~~placements.~~

8 ~~(8) The Legislature affirms the notion that individuals should~~
9 ~~be able to receive care in the least restrictive environment.~~

10 ~~(9) Skilled nursing facilities account for 5 percent of the~~
11 ~~long-term care caseload and 52 percent of the long-term care~~
12 ~~expenditures. Home and community-based services account for~~
13 ~~78 percent of the long-term care caseload, and 13 percent of~~
14 ~~long-term care expenditures. It is therefore more cost-effective to~~
15 ~~connect consumers with services in the community than to~~
16 ~~continue to place individuals in institutions.~~

17 ~~(10) A number of counties and programs have developed and~~
18 ~~implemented innovative Internet-based information systems.~~
19 ~~Some of these systems are designed to help consumers access~~
20 ~~information regarding long-term care services, and others are~~
21 ~~designed to help providers track client information.~~

22 ~~(11) The California Health and Human Services Agency is~~
23 ~~developing the “CalCareNet” Web site, which is designed to help~~
24 ~~the consumer find state-licensed providers of health services,~~
25 ~~social services, mental health services, alcohol and other drug~~
26 ~~services, and disability services, and also to find state-licensed~~
27 ~~care facilities.~~

28 ~~(b) It the intent of the Legislature to enact legislation to do all~~
29 ~~of the following:~~

30 ~~(1) Ensure that each consumer is able to connect with the~~
31 ~~appropriate services necessary to meet individual needs.~~

32 ~~(2) Better coordinate long-term care delivery, recognizing the~~
33 ~~elements that are already in place, and expand the availability of~~
34 ~~long-term care.~~

35 ~~(3) Deliver long-term care services in the most cost-effective~~
36 ~~manner.~~

37 ~~(4) Access multiple public and private funding streams,~~
38 ~~without supplanting existing funding for programs and services.~~

O